Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Sprint Petition for Declaratory Ruling	)	CC Docket No. 01-92
	)	
Obligation of Incumbent LECs to Load Numbering Resources Lawfully Acquired and to Honor Routing and Rating Points Designated by Interconnecting Carriers	))))	
	)	
Developing a Unified Intercarrier Compensation Regime	))	
	)	

To: The Commission

COMMENTS OF ARCH WIRELESS, INC.

Dennis M. Doyle
Vice President, Telecommunications
ARCH WIRELESS, INC.
1800 West Park Drive
Westborough, MA 01581-3912
(508) 870-6612

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SUMMARY

BellSouth's refusal to load Sprint PCS's numbering resources is typical of ILECs' efforts to avoid their interconnection obligations under the Act and the Commission's Rules. Arch urges the Commission to grant Sprint's petition and issue a declaratory ruling that all LECs must load CMRS carriers' numbers (including paging carriers' numbers) with the rating and routing points designated by the CMRS carrier.

In its declaratory ruling, the Commission should make clear (1) that CMRS carriers, including paging carriers, may obtain numbers under Type 1 or Type 2 arrangements in local calling areas in which they serve customers; (2) that CMRS carriers may designate their points of interconnection ("POI") for the delivery of traffic to such numbers at any technically feasible point within a LATA; (3) that ILECs must deliver ILEC-originated traffic to CMRS carriers at the designated POI; and (4) that CMRS carriers that interconnect with the LEC network via either Type 1 or 2 interconnection with a point of interconnection in an ILEC local calling area other than the one where a call originates does not thereby create a wide area calling situation, such that the ILEC may charge for the facilities used to deliver the traffic to the CMRS carrier.

As ILECs and CMRS carriers begin to renegotiate expiring interconnection agreements, the Commission must take decisive action to ensure that the ILECs do not abuse their monopoly power to force CMRS carriers to adopt inefficient network configurations simply so the ILECs can sell more transport at tariffed rates. A declaratory ruling affirming CMRS carriers' right to determine the rating and routing points for their numbering resources will be an important step in the right direction at this crucial time.

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I. INTRODUCTION

Arch Wireless, Inc. ("Arch"), a national provider of paging and messaging services, hereby submits comments in the above-captioned proceeding. Arch supports Sprint Corporation's ("Sprint's") request for a Declaratory Ruling ("Sprint Petition") to confirm the obligations of incumbent local exchange carriers ("ILECs") to load the numbering resources of interconnecting Commercial Mobile Radio Service ("CMRS") carriers, including paging carriers, with the routing and rating points designated by the CMRS carrier.[1]

The circumstances giving rise to the Sprint Petition are just one aspect of the ILECs' efforts to undermine their interconnection obligations under the Telecommunications Act and the Commission's rules, and to force paging carriers (and other interconnecting carriers) into

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[1] *In the Matter of Sprint Corp. Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by LECs,* CC Docket No. 01-92, Petition of Sprint (filed May 9, 2002) ("Sprint Petition").

inefficient and devastatingly expensive interconnection arrangements, to the benefit of the ILECs.

In light of uncertainty regarding ILECs' obligations brought about by recent enforcement decisions, in apparent contravention of the statutory scheme and the Federal Communications Commission's ("FCC's" or "Commission's") *Local Competition Order* and rules, the Commission should provide finality in this instance regarding the ILECs' obligations. Recent conclusions made by the Wireline Competition Bureau in the *Virginia Arbitration* proceeding further highlight the uncertainties that carriers presently face.

The importance of the Commission's ruling in this proceeding cannot be understated. Paging carriers have long been subject to discriminatory interconnection terms by the ILECs. This current effort by BellSouth (and similar efforts by other ILECs) is another step toward the ILEC goal of eviscerating their interconnection obligations. Refusal to load CMRS carriers' numbers would be one way for ILECs to require such carriers to pay for expensive and inefficient network configurations, and to force other carriers to pay once again for the privilege of receiving ILEC-originated traffic. Because of the enormous bargaining power that the ILECs, with their ubiquitous networks, wield in interconnection negotiations, the Commission must decisively rebuke this effort.

II. THE COMMISSION SHOULD ISSUE THE REQUESTED DECLARATORY RULING TO REAFFIRM INTERCONNECTING CARRIERS' RIGHTS

The Commission should issue the requested declaratory ruling even though BellSouth states it is currently loading Sprint's NPA-NXXs. This broad issue is far from moot, and should be definitively settled, or incumbents nationwide will continue to use such tactics to attempt to impose on CMRS carriers unfair and illegal interconnection arrangements.

A. Allowing ILECs to Refuse to Load Numbers Rated and Routed at Different Points Would Undermine the Interconnection Framework Set Out by the Act and the Rules

The Telecommunications Act of 1996 sets forth broad interconnection duties, with specific provisions creating even greater obligations on the incumbents.[2] Section 251 of the Act allows carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."[3] Further, the ILECs have a general duty to interconnect to "establish reciprocal compensation arrangements for the transport and termination of telecommunications."[4]

After the passage of the Telecommunications Act of 1996, the Commission confronted the daunting task of formulating a pro-competitive regulatory framework for the telecommunications industry that applied the Act in more concrete terms. The Commission's *Local Competition Order* still stands as the principal articulation of carriers' interconnection rights and obligations, clearly establishing the premise that all carriers, including CMRS carriers, are entitled to interconnect with the incumbents' networks.[5]

The *Local Competition Order* comprehensively established ILECs' and CMRS carriers' interconnection rights with respect to each other.[6] The Commission concluded that "the Act

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[2] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 151 *et seq.* ("1996 Act" or "Act").

[3] 47 U.S.C. § 251(a)(1).

[4] 47 U.S.C. § 251(b)(5).

[5] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *First Report and Order*, 11 FCC Rcd. 15499, 15997 (1996) ("*Local Competition Order*").

[6] *Local Competition Order*, 11 FCC Rcd. at 15993-16007, paras. 999-1026. The Commission voiced its understanding that, "given that the incumbent LEC will be providing interconnection to its competitors pursuant to the purpose of the 1996 Act, the LEC has the incentive to discriminate against its competitors by providing them less favorable terms and conditions of interconnection than it provides itself." *Local Competition Order*, 11 FCC Rcd. at 15612, para. 218.

does not permit incumbent LECs to deny interconnection or access to unbundled elements for any reason other than a showing that it is not technically feasible."[7] Per section 251, incumbent LECs have a duty to allow CMRS carriers, like all interconnecting carriers, to interconnect with the LEC, not at the point of the LECs choosing, but at "*any technically feasible point*."[8]

The *Local Competition Order* also codified the Act's reciprocal compensation requirements. The *Local Competition Order* concluded that LECs are obligated, pursuant to section 251(b)(5), "to enter into reciprocal compensation arrangements with all CMRS providers, *including paging providers*, for the transport and termination of traffic on each other's networks."[9] Rule 51.703(b) added that "a LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network."[10] As a corollary to these requirements, LECs were forbidden to charge CMRS carriers for receiving the LECs' traffic. The Commission decided in the *Local Competition Order* that "a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge."[11]

Finally, the Commission held in the *Local Competition Order* that "the amount an interconnecting carrier pays for dedicated transport is to be proportional to its relative use of the dedicated facility."[12] When a carrier provides transmission facilities dedicated to the transmission of traffic between two carrier's networks, the carrier "shall recover only the costs of

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[7] *Local Competition Order*, 11 FCC Rcd. at 15606, para. 206; *Id.* at 15991, para. 997; *see also* 47 C.F.R. § 20.11.

[8] 47 U.S.C. § 251(c)(2).

[9] *Local Competition Order*, 11 FCC Rcd. at 15517, para. 34 (emphasis added).

[10] 47 C.F.R. § 51.703(b).

[11] *Local Competition Order*, 11 FCC Rcd. at 16016, para. 1042; 47 C.F.R. § 51.703(b).

[12] *Local Competition Order*, 11 FCC Rcd. at 16027, para. 1062.

the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network."[13]

It has been Arch's experience that the ILECs have never completely accepted the obligations imposed upon them by the Act and the Commission's implementing rules. This fact has not gone unnoticed by the Commission. Commissioner Chong in the *Local Competition Order* noted that "the rates the LECs have charged CMRS providers have far exceeded their costs and thus could not fairly be characterized as 'reasonable' compensation."[14] Prompted by the complaints of frustrated CMRS and paging carriers, former Chiefs of the Common Carrier Bureau, Regina M. Keeney and A. Richard Metzger, Jr., each released letters definitively stating that all CMRS carriers, including paging carriers, are subject to the benefits of section 51.703(b), and cannot be charged to terminate LEC-originated traffic, even though the rules already made these points clear.[15]

In interconnection negotiations going on today, Arch has repeatedly found the ILECs to take positions that ignore their interconnection obligations under the Act. As the instant proceeding demonstrates, ILECs frequently attempt to force interconnecting carriers into inefficient and uneconomical interconnection arrangements, often requiring them to pay the ILECs to transport traffic to the interconnecting carrier's designated, efficient point of interconnection ("POI"). They are also trying to avoid their obligation to carry transit traffic, in contravention of other carriers' right to interconnect with each other indirectly. These efforts are

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[13] 47 C.F.R. § 51.709(b).

[14] *Local Competition Order,* Separate Statement of Commission Rachelle B. Chong ("CMRS providers have suffered past discrimination at the hand of the LECs[.]").

[15] *TSR Wireless, LLC v. U.S. West Comm., Inc.*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, *Memorandum Opinion and Order*, 15 FCC Rcd. 11166, 11169-11170, paras. 5-6 (2000) ("*TSR Wireless*"); citing Letter from Regina M. Keeney, Chief, Common Carrier Bureau to Cathleen A. Massey, AT&T Wireless Services Inc. (March 3, 1997) ("Keeney Letter"); Letter

described in more detail in section II.C., below. Arch first explains the legal uncertainty that contributes to these ILEC efforts.

B. Recent Enforcement Proceedings Have Given the ILECs License to Question Their Statutory Obligations

Unfortunately, the Commission has inadvertently given the ILECs a wedge in their effort to pry themselves loose from the interconnection obligations set forth in the Act and the Rules. The *TSR Wireless* decision was primarily an effort to clarify paging carriers' rights and obligations in a manner that rejected the efforts of the ILECs to obtain improper compensation.[16] It was the Enforcement Bureau's interpretation of the Commission's *TSR Wireless* decision in the subsequent *Mountain* proceedings that did the most unintentional harm.[17] This uncertainty opens the door to circumstances such as those in the instant petition, and the Commission has the opportunity to resolve it here.

In the *TSR Wireless* decision, the Commission summarily rejected ILEC arguments that complaintants, as one-way paging carriers, "are not entitled to the benefits of the Commission's reciprocal compensation regime set forth in the Commission's rules, and therefore must pay for facilities used to deliver LEC-originated traffic."[18] The Commission reaffirmed both that the reciprocal compensation rules apply to paging carriers and that section 51.703(b) prohibits the ILECs from charging paging carriers for terminating LEC-originated traffic.[19] Thus, "a LEC may not charge CMRS providers for facilities used to deliver LEC-originated traffic that

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from A. Richard Metzger, Jr., Chief, Common Carrier Bureau to Keith Davis, Southwestern Bell Telephone, DA 97-2726 (December 30, 1997) ("Metzger Letter").

[16] *TSR Wireless,* 15 FCC Rcd. at 11166.

[17] *Mountain Communications, Inc. v. Qwest Communications International, Inc.,* File No. EB-00-MD-017, *Memorandum Opinion and Order,* 17 FCC Rcd. 2091 (2002) ("*Mountain*").

[18] *TSR Wireless,* 15 FCC Rcd. at 11167-11168, para. 2.

[19] *TSR Wireless,* 15 FCC Rcd. at 11176-11177, para. 19, n.70.

originates and terminates within the same MTA, as this constitutes local traffic under our rules."[20] The Commission, however, also rejected complainants' argument that section 51.703(b) precludes LECs from charging paging carriers for "wide area calling services."[21]

After the *TSR Wireless* decision, paging carriers and ILECs continued to have conflicting interpretations of what interconnection charges could be imposed, particularly as to what constituted a wide area calling arrangement. Citing to the *TSR Wireless* decision for support of its conclusions, the Enforcement Bureau in *Mountain* defined "wide area calling" arrangements in such a manner that they could include standard number loading arrangements.

Wide area calling is a situation where a carrier, such as a paging carrier, makes an arrangement with an ILEC under which calls from the ILEC's subscribers to the paging carrier's subscribers *that would otherwise be toll calls* (that is, the two customers' numbers are rated in *different* local calling areas) will be treated as local on the ILEC's customer's bill (but the paging carrier will pay the ILEC for this service). This allows a paging carrier to offer its subscribers a service with a number that appears to be "local" within an area larger than the typical ILEC local calling area. The ILEC indeed forgoes toll revenue in this situation, and paging carriers indeed have negotiated payment terms with LECs where they order it. But it does not follow, as *TSR Wireless* seems to suggest and *Mountain* seems clearly to hold, that a call from an ILEC subscriber to a paging subscriber *both of whose numbers are rated in the same ILEC local area* constitutes wide area calling, simply because the paging carrier's interconnection point is in a different local calling area than the Type 1 local end office.

Wide area calling must be contrasted with standard number loading arrangements in the CMRS context, where CMRS carriers obtain numbers to be rated in local calling areas where they

[20] *TSR Wireless*, 15 FCC Rcd. at 11184, para. 31.

[21] *Id.*

provide service, but routed to their POIs. CMRS carriers do so simply to be able to offer local calling to customers in the areas where they hold licenses and provide service. Without a true wide-area calling arrangement with the LEC, calls to their subscribers will be subject to the local ILEC's standard local calling areas – the LECs do not lose a dime of legitimate toll revenue through this arrangement.

It should be noted that this is very different from the situation, for example, in the *Brooks Fiber* case, where a CLEC took local numbers in areas where it had *no* terminating facilities in order to provide inbound local calling to its customers located elsewhere.[22] Paging carriers generally have facilities to terminate traffic in the areas where they request numbers. While the Bureau, and later the full Commission, may have been motivated by a concern that Mountain was trying to force the LEC to avoid toll revenue, the Commission must beware of creating precedent that would inadvertently restrict established interconnection rights and arrangements.[23]

Neither the BellSouth Opposition nor the Enforcement Bureau's analysis in *Mountain* grapples with the distinction between wide area calling and standard CMRS rating and routing practices. As a result, they appear to conflict with carriers' right to interconnect with the ILECs at *any* technically feasible point.[24] The Commission has concluded that an "ILEC must allow a

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[22] *Investigation Into Use of Central Office Codes (NXXs) by New England Fiber Communications, Inc.,* LLC, Dkt. No. 98-78, Maine PUC (2000) ("*Brooks Fiber*").

[23] *Mountain Communications, Inc. v. Qwest Communications International, Inc.,* File No. EB-00-MD-017, *Order on Review,* FCC 02-220, para. 5 (2002) ("*Mountain Order on Review*").

[24] 47 C.F.R. § 20.11(a); *see also In the Matter of WorldCom, Inc., Pursuant to Section 252(e)(5) of the Communications Act for the Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, CC Docket No. 00-218, *Memorandum Opinion and Order*, DA 02-1731, para. 67 (2002) ("*Virginia Arbitration*").

requesting telecommunications carrier to interconnect at any technically feasible point, including the option to interconnect at a single [POI] per LATA.[25]

A CMRS switch can serve greater areas than the ILEC switch. A call is terminated on the terminating carrier's network, not at the point of interconnection.[26] That is, with paging service, a call essentially is completed when the called paging unit receives its page – generally, in the local calling area where the called number is rated and where the paging subscriber is likely to be located. The ILECs' refusal to recognize the role of CMRS facilities in the carriage of traffic (characterized by BellSouth's descriptions of call routing scenarios[27]) seeks to create a false impression that calls originate or terminate at the points the ILEC receives them or hands them off. This confusion is at the core of the ILECs' effort to avoid their obligations under the statute and the rules.[28]

Most recently, the full Commission addressed the *Mountain* decision on reconsideration.[29] The Commission concluded that Mountain configured its network in such a way that "Mountain prevents Qwest from charging its customers for what would ordinarily be toll calls to access Mountain's network."[30] The decision does not explain, however, how the ILEC's transport of its own traffic to Mountain's POI—which is the ILEC's obligation—constitutes wide area calling, particularly where the numbers are rated in the same local calling area. In other words, under *Mountain's* logic, a call from an ILEC customer to a paging

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[25] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Notice of Proposed Rulemaking*, 16 FCC Rcd. 9610, 9650, para. 112 (2001) ("*Intercarrier Compensation NPRM*"); *see also Virginia Arbitration*, para. 67.

[26] 47 C.F.R. § 51.701(b)(2); *see also Virginia Arbitration*, para. 301.

[27] *See* BellSouth Opposition, Affidavit of Robert James.

[28] *Id.*

[29] *See Mountain Order on Review*.

[30] *Mountain Order on Review,* para. 5.

subscriber located across the street from one another in Colorado Springs "would ordinarily be a toll call" and amounts to wide-area calling simply because it must be switched at Mountain's paging switch in Pueblo.

Not surprisingly, in order to reach this conclusion, *Mountain* had to stretch the definition of wide area calling beyond all recognition. In *TSR Wireless,* the Commission had correctly defined wide area calling as a situation, synonymous with reverse-toll billing, where "a LEC agrees with an interconnector not to assess toll charges on calls from the LEC's end users to the interconnector's end users."[31] In order to shoehorn in the normal Type 1 arrangement in *Mountain*, however, the Commission stated that reverse toll billing is "only one of several types of wide area calling services" and defined wide area calling to include any calls from LEC customers to paging customers "when the LEC must complete those calls by transporting the calls from one local calling are to another"[32] – even, apparently, when the only reason it must do so is to get them to the paging carrier's designated POI. Nor does the decision explain how a LEC can "complete" paging traffic destined for another carrier's network. As noted above, such traffic is completed by the paging carrier on the paging network. The *Mountain* decision also went beyond *TSR Wireless* in addressing foreign exchange ("FX") facilities. In *TSR Wireless*, US West had tried to characterize the complainant's allegations to include the provision of FX service, but the Commission rightfully did not address the issue, as the FX facilities were simply a part of the provision of Type 1 interconnection.[33] In *Mountain*, however, the Commission explicitly described the T-1 FX facilities that Mountain had ordered as part of a wide-area calling arrangement.[34]

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[31] *TSR Wireless*, 15 FCC Rcd. at 11167, para. 2, n.6.

[32] *Mountain Order on Review*, para. 5.

[33] *TSR Wireless,* 15 FCC Rcd. at 11184-11185, para. 31, n.108.

[34] *Mountain Order on Review*, para. 5.

Because of its muddling of these issues, *Mountain* arguably held that *every* Type 1 interconnection arrangement constitutes wide-area calling, except in the local calling area where the CMRS carrier's switch is located. By extension, the same could be argued about Type 2 arrangements, such as those in this case. Under this logic, CMRS carriers that receive codes from NANPA and request that they be rated in any local calling area other than the one containing their POI would be deemed to have ordered wide area calling. This result – with respect to either Type 1 or Type 2 arrangements – would, of course, be absurd and flatly in conflict with the ILECs' obligations to allow interconnection at any technically feasible point and to pay for the delivery of ILEC-originated traffic.

Indeed, the *Mountain* decision stands in contrast to the recent *Virginia Arbitration* decision.[35] In the *Virginia Arbitration* decision, the Bureau rebuffed Verizon's efforts to avoid its duty to carry its traffic to the POI. Instead, Verizon attempted to require carriers to take financial responsibility for Verizon's traffic at interconnection points ("IPs") located closer to the local calling area.[36] Acknowledging that carriers can determine where they want to physically interconnect within Verizon's network, Verizon attempted to shift "onto competitive LECs some of the costs Verizon incurs to transport traffic to the point of interconnection."[37] Cox Virginia Telecom, Inc. ("Cox"), citing to the *TSR Wireless* decision, argued that the Commission "held that a LEC cannot avoid its obligations to deliver traffic to another carrier's point of interconnection by charging the carrier for delivering traffic to the point of interconnection, regardless of how the LEC characterizes these charges."[38] The Bureau ultimately agreed with Cox and rejected Verizon's efforts to deny its responsibility to carry its traffic to the POI, stating

[35] *See Virginia Arbitration*.

[36] *Virginia Arbitration*, para. 49.

[37] *Id.*

[38] *Virginia Arbitration*, para. 44; *citing TSR Wireless*.

that the "incumbent LEC is required to bear financial responsibility for this traffic."[39] The Commission should reaffirm the ILEC's duty to carry traffic to the interconnecting carrier's chosen technically feasible POI.

The *Virginia Arbitration* also reaffirmed the ILECs' obligation to provide transit service, which refusal to load numbers undermines. The Bureau concluded that Verizon's proposal to cease providing tandem transit service is "not reasonable" because it poses "too great a risk of service disruption to AT&T's end users."[40] The Bureau speaks to the obligation of Verizon, and ultimately of all ILECs, to facilitate interconnection with the PSTN.[41] The Act does not envision carriers being required to interconnect directly with one another. Section 251 assumes that carriers will interconnect indirectly through the ILEC's network. The ILECs' denial of their obligations shows a disregard for their roles as the proprietors of the legacy network. In Alltel's words, "it is axiomatic that CM[R]S carriers have the right to interconnect directly or indirectly with other telecommunications carriers through the ILEC of their choosing in accord with the ILEC's obligations under Section 251 of the Act."[42] The *Virginia Arbitration* notes that "the Commission has held, in another context, that a 'fundamental purpose' of section 251 is to

[39] *Virginia Arbitration*, para. 52.

[40] *Virginia Arbitration*, para. 115. The Bureau further clarified in the *Virginia Arbitration* that, while the ILEC obligation to provide transit service has not been definitely determined by the Commission, it will require Verizon to provide such service. The Commission, the Bureau notes, "has not had occasion to determine whether incumbent LECs have a duty to provide transit service under the provision of the statute, nor do we find clear Commission precedent or rules declaring such a duty." *Virginia Arbitration*, para. 117.

[41] *Virginia Arbitration*, para. 118.

[42] *In the Matter of Sprint Corp. Petition for Declaratory Ruling Regarding the Routing and Rating of Traffic by LECs,* CC Docket No. 01-92, Comments of Alltel Communications, Inc., at p. 2 (filed May 9, 2002) ("Alltel Comments").

'promote interconnection of all telecommunications networks by ensuring that incumbent LECs are not the only carriers that are able to interconnect efficiently with other carriers.'"[43]

This same clear-headed grasp of the Act and the Rules should prevail in analyzing the unreasonableness of BellSouth's attempts to avoid carrying Sprint's, or other interconnecting carriers', traffic to its tandem for interconnection by refusing to load NPA-NXX codes rated in another ILEC's local calling area. Indeed, the Bureau in the *Virginia Arbitration* concludes that it is appropriate to rate traffic as local or toll based on the designated rating points of the NPA-NXX of the originating and terminating telephone numbers.[44] Verizon argued that a "toll" rating should be "accomplished by comparing the geographic locations of the starting and ending points of a call."[45] Contrary to the clear error in the *Mountain* decisions, the Bureau followed industry convention and the statutory scheme, and prohibited the ILECs from claiming lost toll revenue for calls that originate and terminate within the same local calling area.[46]

Although Sprint had requested BellSouth to load numbers pursuant to a Type 2 interconnection agreement, as noted above, the failure to distinguish between different rating and routing points, on the one hand, and wide area calling arrangements, on the other, also arises with Type 1 arrangements. Legacy paging systems tend to use large quantities of Type 1 numbers because paging carriers acquired the numbers before the Act prohibited exorbitant code-opening fees to establish Type 2 arrangements. Also, it is generally recognized that the use

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[43] *Virginia Arbitration*, para. 118; citing *Deployment of Wireline Service Offerings Advanced Telecommunications Capability*, CC Docket No. 98-147, *Fourth Report and Order*, 16 FCC Rcd. 15435, 15478, para. 84 (2001) ("*Collocation Order on Remand*").

[44] *Virginia Arbitration*, para. 301.

[45] *Virginia Arbitration*, para. 286.

[46] *Virginia Arbitration*, para. 301 (noting that Verizon admits that "NPA-NXX rating is the established compensation mechanism not only for itself, but industry-wide.")

of Type 1 numbers allows for the more efficient use of numbering resources.[47] These numbers are rated in local calling areas where Arch serves paging customers. Traffic to these numbers is only deemed local if it comes from callers in the same ILEC local calling area where the paging numbers are rated (whether or not this is the same end office to which the paging carrier is physically interconnected). The ILEC forgoes no reasonable toll revenue in this scenario; thus, it does not constitute wide area calling.

C. The Sprint Petition Highlights ILEC Efforts to Avoid Interconnection

The Sprint Petition explains how BellSouth attempted to refuse to program its tandem switch with Sprint's NPA-NXX codes when the rating and routing points were different, particularly when the rating point was in a local calling area served by a different LEC that, like Sprint, subtended the BellSouth tandem.[48] BellSouth instead proposed to route the calls to the end-office switch of the independent carrier, with which Sprint does not interconnect directly, thus needlessly bringing a third party into the completion of a call.

If permitted to refuse to load interconnecting carriers' NPA-NXX codes where the rating and routing points are different, BellSouth effectively would be requiring interconnecting carriers to interconnect directly at each local calling area in which they have numbers rated. By doing so, BellSouth would force paging carriers to choose between their need to provide local numbers to their customers in the areas where they provide service (and own facilities to terminate traffic), and their right to interconnect with the ILEC at a single, efficient point. By refusing to do so where the local calling area is served by another ILEC that subtends the same BellSouth tandem, BellSouth also would be violating its obligations to facilitate the other

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[47] Under Type 1 arrangements, carriers can request relatively small quantities of numbers from a LEC, while in Type 2 arrangements the carriers must take a full NXX code, a block of 10,000 numbers, from NANPA. In a small or rural area where a paging carrier is unlikely ever to have close to 10,000 subscribers, Type 1 arrangements avoid stranding large quantities of numbers.

[48] Sprint Petition, Exhibit A.

carriers' right to interconnect with each other indirectly. These are serious violations of ILEC obligations that clearly justify the issuance of a declaratory ruling – particularly given that BellSouth's position is not unique among ILECs.

There is yet another reason, however, why the Commission must issue a declaratory ruling in this case. An ILEC's refusal to load numbers where the rating and routing points are different also represents an effort to use monopoly power to extort interconnecting carriers to purchase unnecessary transport links from the ILEC, generally at tariffed rates that significantly exceed forward-looking cost.

This is best shown by example. Sprint's petition describes call flows between a BellSouth customer in its Ponte Vedra Beach, Florida, exchange and a Sprint mobile customer located (and having a number rated) in Alltel's Callahan, Florida, exchange.[49] In this hypothetical, if Sprint wishes to have local numbers to serve its customers in Callahan, BellSouth proposes to deliver calls bound for Sprint's Callahan customers to Alltel's Callahan end office switch – to which Sprint has no direct interconnection – rather than to Sprint's POI at BellSouth's Jacksonville tandem. If BellSouth is allowed to do so, Sprint will be forced to interconnect directly with Alltel in Callahan. Given the low volume of traffic that is likely exchanged between Sprint and Alltel, however, and the cost of constructing new facilities between Sprint's mobile switch in Jacksonville and Callahan,[50] Sprint is most likely to solve the problem BellSouth created by purchasing transport from BellSouth, which conveniently already has facilities interconnecting Alltel's Callahan exchange and its Jacksonville tandem.

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[49] *See* Sprint Petition, pp. 7-9.

[50] Theoretically, another solution would be for Sprint to locate a mobile switch in Callahan but, given the cost of such switches and the low volume of mobile traffic in Callahan, relative to the capacity of modern switches, this option would make even less economic sense than constructing a transport link between Jacksonville and Callahan.

An ILEC such as BellSouth insisting that CMRS carriers interconnect in every local calling area where they have local numbers is even more insidious when the rate center in question is served by the same ILEC that operates the local tandem.[51] Assume in this case that BellSouth also operates the Callahan exchange, and the call in question flows from a BellSouth customer in Callahan to a Sprint Callahan customer. If Sprint must interconnect directly in Callahan to have numbers rated there (and thus, as a result, must pay to transport traffic from the "new" interconnection point in Callahan to its switch in Jacksonville), BellSouth will effectively have avoided its obligation to deliver *its own traffic* to Sprint's designated POI in Jacksonville.[52]

As Arch has noted, ILECs' refusal to load numbers with different rating and routing points is not limited to BellSouth. Arch currently is negotiating a thirteen-state interconnection agreement with an ILEC that, within the past two weeks, has revised its proposed terms to exempt from reciprocal compensation obligations traffic bound for paging numbers *rated in the same local calling area where the call originates* if the paging carrier's switch is in a different local calling area. The proposed agreement also would require the paging carrier to pay all costs for the facilities used to deliver traffic in such cases. The widespread nature of these types of disputes clearly demonstrates the need for a decisive declaratory ruling in this case. Such refusal, if permitted, would allow the ILECs to avoid their statutory interconnection obligations and also to use their monopoly power to force interconnecting carriers to purchase unneeded facilities from them in order to effectuate an inefficient network configuration.

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[51] Although BellSouth may not have insisted on this in the present case, other ILECs have done so. Note, for example, that in the Virginia arbitration the ILEC proposed that interconnecting carriers' responsibility for transporting traffic – including ILEC traffic – would begin at hypothetical points located much closer to the local calling area than the actual POI.

[52] It must be borne in mind that, if the carriers continue to interconnect at BellSouth's Jacksonville tandem, Sprint will be responsible for the cost of delivering traffic that originates on its CMRS facilities in Callahan to the Jacksonville POI.

D. BellSouth Cannot Rely on its State Tariffs to Avoid its Obligations to Load Interconnecting Carriers' Codes

BellSouth argues that the current proceeding raises issues that should be addressed by state commissions, not the FCC.[53] As discussed above, this proceeding raises a number of issues, all of which arise under the Federal statute and the Commission's implementing regulations. The Commission held in the *TSR Wireless* decision that the ILECs are required to comply with the *Local Competition Order* regardless of what is included in their state tariffs.[54] Further, litigating the interconnection and numbering issues raised in this proceeding at the individual state level would present an unreasonable burden on interconnecting carriers. Given the complexity of these issues, there is also a likelihood that different states could reach different – and perhaps conflicting – results.

Finally, BellSouth claims that its current practice of loading numbers with different rating and routing points violates its state virtual NXX tariff offering.[55] Verizon argued in the *Virginia Arbitration* that the virtual NXX offering could be abused by a carrier using virtual NXX codes in exchanges where they do not actually serve customers with virtual NXX offerings.[56] Sprint notes that BellSouth's tariff offering has been in effect for six years, without raising any concern that its current offering is in opposition to the tariff.[57] In response to Verizon, the Bureau concluded that "state commissions, through their numbering authority, can correct any abuses of NPA-NXX allocations."[58] In fact, the state commission in Maine directed the NANPA to reclaim NPA-NXX codes acquired by a carrier that was not providing any customer's local

[53] BellSouth Opposition, p. 1.

[54] *TSR Wireless*, 15 FCC Rcd. at 11183, para. 29.

[55] BellSouth Opposition, p. 4.

[56] *Virginia Arbitration*, para. 303.

[57] Sprint Petition, p. 12.

[58] *Virginia Arbitration*, para. 303.

services in that exchange.[59] None of the concerns present in that case are presented here, as CMRS carriers request numbers in local calling areas where they possess CMRS facilities to serve customers.

CONCLUSION

As an initial matter, Arch asks the Commission to address the Sprint Petition by affirming that the ILECs may not, under any circumstance, deny an interconnecting carrier's efforts to load numbers, even if the routing and rating points differ. Such anticompetitive efforts are counter to industry convention and the Commission's numbering rules, and serve only to require interconnecting carriers to connect directly with every local calling area in each local calling area and to permit the ILECs to avoid carrying any third-party traffic.

In issuing this declaratory ruling, the Commission should use this opportunity to provide clarity to paging carriers and other CMRS carriers by affirming its rules and their applicability in this proceeding. To this end, Arch asks the Commission, based on the record in this proceeding, to clarify that the reason that ILECs may not refuse to honor CMRS carriers' designated rating and routing points is that to do so would violate interconnecting carriers' right to designate their points of interconnection, and ILECs' obligation to pay for the delivery of ILEC originated

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[59] *Brooks Fiber*.

traffic. It is imperative that the full Commission review these issues to provide certainty regarding carriers' interconnection rights and obligations.

Respectfully submitted,

By: /s/

Dennis M. Doyle
Vice President, Telecommunications
ARCH WIRELESS, INC.
1800 West Park Drive
Westborough, MA 01581-3912
(508) 870-6612

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